

¹ 5 U.S.C. § 8101 *et seq.*

around a corner, he twisted his wrist when the drawers slid out and the cart fell forward. He indicated that he heard a popping sound and his wrist swelled. Appellant did not stop work. The employing establishment advised that it received notice of the claimed injury on January 12, 2017.

Appellant submitted an employing establishment report of employee's emergency treatment dated December 16, 2016, prepared by a healthcare provider with an illegible signature, who noted that appellant was treated for a work-related injury. The healthcare provider noted that appellant was unable to push, pull, climb ladders or stairs, and bear weight with the right hand. Appellant was instructed to wear a thumb splint until follow up with workers' compensation. He was provided with discharge instructions and prescribed Arnicare gel.

In a letter dated January 24, 2017, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting a detailed description of how his claimed injury occurred as well as a physician's reasoned opinion addressing the relationship of his claimed condition to the specific employment factors. It requested that appellant respond to an attached factual development questionnaire describing how his claimed injury occurred. No response was received.

On February 1, 2017 the employing establishment offered appellant a light-duty assignment, effective February 1, 2017, based on a medical report from a nurse practitioner who noted a date of injury of December 13, 2016. On February 7, 2017 appellant accepted the job offer.

In a February 24, 2017 decision, OWCP denied appellant's claim as the evidence of record did not support that the injury or events occurred as alleged. It indicated that he had failed to respond to the January 24, 2017 development letter, which sought to clarify the specific factual elements of his claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must

² *Id.*

³ Gary J. Watling, 52 ECAB 357 (2001).

submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁴

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁵ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁶

ANALYSIS

In the present case, appellant, a health technician, filed a claim for traumatic injury (Form CA-1) on January 17, 2017, alleging that on December 13, 2016, while rolling a metal shower cart around a corner, he injured his wrist when the drawers slid out and the cart fell forward. He indicated that he heard a popping sound and his wrist swelled. The Board finds that the evidence of record is insufficient to establish that the claimed employment incident occurred as alleged.

On January 24, 2017 OWCP requested that appellant describe in detail how the claimed injury occurred. Appellant did not respond to this letter. The record does not contain a sufficiently detailed description of how his injury occurred. Appellant has also failed to identify which wrist was injured in the alleged December 13, 2016 incident. Additionally, he did not seek medical treatment for three days and waited a month to report the injury to his supervisor and file a claim.

Similarly, the December 16, 2016 report of employee's emergency treatment does not describe how any claimed injury occurred. A healthcare provider with an illegible signature noted that appellant was treated for a work-related injury, but that healthcare provider failed to provide a history of any incident giving rise to the claimed injury, including the date of the alleged work injury.

While an injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action. Appellant alleged the incident occurred on December 13, 2016, but he did not file a claim until January 17, 2017. He did not respond to OWCP's request for detailed information about how the

⁴ *T.H.*, 59 ECAB 388 (2008).

⁵ *R.T.*, Docket No. 08-0408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

⁶ *Betty J. Smith*, 54 ECAB 174 (2002).

work incident occurred⁷ and he did not provide a clarifying explanation as to why he waited over a month to file a claim after the alleged injury.⁸

For these reasons, the Board finds that appellant has failed to meet his burden of proof to establish that the claimed traumatic injury occurred as alleged.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a wrist injury on December 13, 2016 in the performance of duty.

⁷ See *E.R.*, Docket No. 17-0742 (issued June 26, 2017) (OWCP notified appellant of the additional factual evidence needed to support that the claimed incident occurred as alleged; as he did not submit such evidence, appellant has failed to meet his burden of proof).

⁸ See *supra* note 6; *J.B.*, Docket No. 14-1421 (issued November 14, 2014) (notification of injury, if otherwise unexplained, may cast doubt on an employee's statement that an injury occurred as alleged).

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board